

*lit.*

BEFORE THE POLLUTION CONTROL HEARINGS BOARD  
STATE OF WASHINGTON

AQUA BRITE COMPANY,	)	
	)	
Appellant,	)	PCHB No. 92-9
	)	
v.	)	
	)	
PUGET SOUND AIR POLLUTION	)	FINAL FINDINGS OF FACT,
CONTROL AGENCY,	)	CONCLUSIONS OF LAW
	)	AND ORDER
	)	
Respondent.	)	

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This matter involves Aqua Brite Company's alleged violation of air pollution regulations at 4511 Shilshole Avenue NW, Seattle, Washington, on September-October, 1991.

A hearing was held Thursday, May 28, 1992 at the Board's office in Lacey, Washington. Present for the Pollution Control Hearings Board were Chairman, Harold S. Zimmerman, presiding, and John Buckwalter, Administrative Law Judge and counsel for the Board. Member Annette S. McGee has reviewed the record and exhibits.

Appellant Aqua Brite Company, was represented by David Zahradnik, president and owner of Aqua Brite Company. Respondent Puget Sound Air Pollution Control Agency was represented by Keith D. McGoffin of McGoffin and McGoffin, 818 South Yakima Avenue, Tacoma, Washington. The proceedings were taped and were recorded by Betty J. Koharski, certified court reporter affiliated with Gene Barker and Associates.

Testimony was heard and exhibits admitted and examined. Argument was made. From the foregoing, the Board makes these:

FINAL FINDINGS OF FACT,  
CONCLUSIONS OF LAW AND ORDER  
PCHB NO. 92-9 (1)

1  
2 FINDINGS OF FACT

3 I

4 After receiving a call September 30, 1991 from a citizen complaining about  
5 sandblasting at Western Pioneer near her home, Rosemary Busterna, inspector for Puget Sound  
6 Air Pollution Control Agency (PSAPCA), visited Western Pioneer, 4515 Shilshole Avenue  
7 NW, Seattle, on October 1, 1991, to investigate the complaint. She was referred to Delta  
8 Western's "lube plant" in the yard, where the sandblasting occurred. Delta Western is a  
9 division of Western Pioneer, a shipping company.

10 II

11 At 8:54 a.m. Inspector Busterna took pictures from the street of three large grey tanks  
12 which were approximately 21 feet long by 12 feet in diameter. Inspector Busterna then met  
13 with Neal Lettich of Delta Western Company at 4601 Shilshole Avenue NW, Seattle, and was  
14 told that Aqua Brite, owned by Dave Zahradnik, performed the sandblasting Friday of the  
15 three tanks. At the request of the inspector, Mr. Lettich called Mr. Zahradnik to come to the  
16 site and meet with them.

17 III

18 Mr. Zahradnik told Inspector Busterna that he had used 36 grit sand, had informed the  
19 neighbors that he would be sandblasting, and would be sandblasting from top, down to the  
20 ground. Mr. Zahradnik and Inspector Busterna visited the "lube plant" area and checked for  
21 blast grit fallout in adjacent areas.

22 IV

23 Inspector Busterna took more photos at 9:30 a.m. and 9:31 a.m. of the area adjacent to  
24 the blast area of fallout from abrasive blasting. The inspector explained to Mr. Zahradnik and  
25 left copies of PSAPCA's Regulation I, Section 9.11 dealing with "Emission of Air  
26

1  
2 Contaminant"; Detriment to Person or Property;" Section 9.15, "Fugitive Dust; Emission  
3 Standards;" and Section 9.04, "Deposition of Particulate Matter." She <sup>also</sup> issued a Notice of  
4 Violation No. 27560 at 10:13 a.m. for "Causing or Allowing the Emission of Fugitive Dust"  
5 at 4511 Shilshole Avenue NW, Seattle, without using best available control technology.

6 V

7 Mr. Zahradnik was ordered in the Notice of Violation No. 27560 to cease and desist  
8 from violating these sections of Regulation I. Inspector Busterna explained that "Best  
9 Available Control Technology" in this situation has been considered to be total enclosure  
10 tarping to contain sandblasting emissions.

11 A handout providing information for filing an appeal was also provided Mr. Zahradnik  
12 at the time of the inspection.

13 VI

14 At 12:31 p.m., on October 2, 1991, Inspector Busterna received a complaint from the  
15 Department of Ecology that they had been contacted by a citizen reporting that Aqua Brite was  
16 again blasting and painting and that fugitive emissions were blowing onto their property. At  
17 1:30 p.m. Inspector Busterna arrived at the "lube plant" at 4511 Shilshole Avenue NW,  
18 Seattle. There was a tarp over the tanks but its ends were not secured to the ground. Photos  
19 were taken of alleged fugitive dust emissions billowing across the street from the job site.  
20 Another photo was taken at the job site.

21 VII

22 Inspector Busterna contacted an employee at the job site informing him of her  
23 observations of fugitive dust emissions and stressed the need to immediately repair and tape  
24 down the ends of the tarping to contain emissions. At 1:00 p.m. another photo was taken to  
25 show the tarp taped down and held in place with plywood.

VIII

On October 3, 1991, David Zahradnik of Aqua Brite was mailed a Notice of Violation 27984, citing violations of Section 9.15(a) and (d). On October 8, 1991, affidavits were received by PSAPCA of signed statements from two persons who had complained of the blasting on September 27, 1991, at the job site address.

On December 5, 1991, Notice and Order of Civil Penalty No. 7510 for \$1,000 was sent to Mr. Zahradnik by certified mail, along with a Consent Order and Assurance of Discontinuance.

IX

The three large tanks being sandblasted hold 12,000 gallons each, and are physically of a size that make them quite difficult to control 100% of the dust emissions within the tarp covering.

X

The area of the Western Pioneer Delta is primarily industrial, and is not considered residential. Sandblasting requires pressurized air to remove rust, paint or dirt. Since the pressurized air that goes in to the tarp must come out somewhere, it is difficult to capture.

XI

Respondent, pursuant to RCW 43.21B.260 has filed with this Board a certified copy of its Regulation I, containing respondent's regulations and amendments thereto of which official notice is taken.

XII

Any Conclusion of Law deemed to be a Finding of Fact is hereby adopted as such.

From these Findings of Fact, the Board issues these:

1  
2 CONCLUSIONS OF LAW

3 I

4 The Pollution Control Hearings Board has jurisdiction over this appeal. Chapter  
5 43.21B RCW and Chapt. 70.94 RCW.

6 II

7 The Washington Clean Air Act defines "air pollution" as follows:

8 "Air pollution" is the presence in the outdoor atmosphere of one or more air  
9 contaminants in sufficient quantities and of such characteristics and duration as  
10 is, or is likely to be, injurious to human health, plant or animal life, or  
11 property, or which unreasonably interferes with enjoyment of life and property.  
12 RCW 70.94.030(2). (Emphasis added.)

13 The term "air contaminant" is defined as follows:

14 "Air contaminant" means dust, fumes, mist, smoke, other particulate matter,  
15 vapor, gas, odorous substance, or any combination thereof.  
16 RCW 70.94.030(1).

17 III

18 PSAPCA Regulation I draws on the statutory definitions in dealing with emissions.

19 **SECTION 9.04 DEPOSITION OF PARTICULATE MATTER** states:

20 It shall be unlawful for any person to cause or allow the emission of particulate  
21 matter which becomes deposition upon the property of others in sufficient  
22 quantities and of such characteristics and duration as is, or is likely to be,  
23 injurious to human health, plant or animal life, or property, or which  
24 unreasonably interferes with enjoyment of life and property.

25 IV

26 Section 9.11 of PSAPCA's Regulation I, deals with emission of air contaminants  
27 detriment to person or property, and states:

1 (a) It shall be unlawful for any person to cause or allow the emission of an air  
2 contaminant in sufficient quantities and of such characteristics and duration as  
3 is, or is likely to be, injurious to human health, plant or animal life, or  
4 property, or which unreasonably interferes with enjoyment of life and property.

5 V

6 PSAPCA's Regulation I, Section 9:15 specifically provides, in pertinent part, emission  
7 standards for "fugitive dust":

8 (a) It shall be unlawful for any person to cause or allow the emission of  
9 fugitive dust unless such person uses the best available control technology to  
10 control the emissions...

11 (d) It shall be unlawful for any person to cause or allow the emission of  
12 fugitive dust in sufficient quantities and of such characteristics and duration as  
13 is, or is likely to be, injurious to human health, plant or animal life, or  
14 property, or which unreasonably interferes with enjoyment of life and property.

15 VI

16 The Washington Clean Air Act, amended in 1991, increased the maximum penalty  
17 from \$1,000 to \$10,000 per violation per day. (RCW 70.94.431). The reasonableness of the  
18 fine is dependent upon several factors, including the magnitude of the violation, past history,  
19 and post violation conduct before the Notice of Violation, and civil penalty issued.

20 In this instance, the incident was the first violation in which the appellant was cited,  
21 and we note that the tarp enclosure was put in place 21 minutes after first arrival of the  
22 inspector on the site.

23 Since the primary purpose of a fine is not to punish but to change behavior, we balance  
24 these factors, and conclude that some reduction of the penalty is merited.  
25  
26

VIII

Any Finding of Fact deemed to be a Conclusion of Law is hereby adopted as such.

From the foregoing, the Board issues this:

ORDER

The Penalty No. 7510 is affirmed as to liability. The \$1,000 penalty is affirmed, but \$400 is suspended provided that Aqua Brite does not violate air pollution laws relating to particulates, or fugitive emissions for two years from the date of this Order.

DONE this 14<sup>th</sup> day of June, 1992.

POLLUTION CONTROL HEARINGS BOARD

  
HAROLD S. ZIMMERMAN, Chairman

  
ANNETTE S. MCGEE, Member

P92-9F